

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, et al.,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983-TSZ

DECLARATION OF GABRIEL REILLY-  
BATES IN SUPPORT OF PLAINTIFFS'  
RESPONSE TO CITY OF SEATTLE'S  
MOTION FOR SPOILIATION

**Noted: November 15, 2022**

I, Gabriel Reilly-Bates, declare as follows:

1. I am an attorney with Morgan, Lewis & Bockius LLP and represent Plaintiffs in the above-captioned action. I am over eighteen years of age and am competent to testify herein. I make the following statements based on my personal knowledge.

2. The documents that the City of Seattle ("City") claims that Jill Cronauer "failed to preserve" or "deleted", Cramer Declaration Exs. 108-7 through 108-10, were not in fact deleted.

DECLARATION OF GABRIEL REILLY-BATES  
IN SUPPORT OF PLAINTIFFS' RESPONSE TO  
CITY OF SEATTLE'S MOTION FOR  
SPOILIATION  
(Case No. 2:20-cv-00983-TSZ) - 1

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1           3.       On Tuesday, September 27, 2022, two days before the City filed its Motion for  
2       Spoliation Sanctions (the “Motion”), the City disclosed, for the first time, that it believed that Ms.  
3       Cronauer had deleted one text message chain and three email chains.

4           4.       The City made this disclosure because it had not received them in discovery from  
5       Hunters Capital; instead, they received them from third-parties.

6           5.       On Thursday, September 29, 2022, **before** the City filed its Motion for Spoliation  
7       Sanctions (Dkt. No. 107), counsel for the Plaintiffs sent an email indicating that three of the four  
8       documents the City claimed were “deleted” had not actually been deleted, but in fact had not been  
9       produced for various reasons. A true and correct copy of an email from Tyler Weaver dated  
10      September 29, 2022, regarding Ms. Cronauer’s emails and text message chain not being deleted is  
11      attached hereto as Exhibit 1. I received a copy of Exhibit 1 on September 29, 2022.

12          6.       My colleague, Tyler Weaver, indicated that it was not an appropriate issue for a  
13      motion for spoliation, and that the City had not provided enough notice to resolve the discovery  
14      issue. In addition, on October 28, 2022, counsel produced copies of Cramer Ex. Nos. 108-8  
15      through 108-10, to the City. We indicated that we would produce text messages contained in  
16      Cramer Ex. No. 108-7 at a later date following a review of the text message collection.

17          7.       Later, counsel for Plaintiffs discovered the fourth and final document that the City  
18      claimed was missing.

19          8.       In addition, the parties further met and conferred and agreed that this issue was not  
20      a spoliation issue, as the documents were not deleted, but it was a discovery issue, and that the  
21      parties would continue to meet and confer about the issue.

22          9.       A true and correct copy of excerpts from the Deposition of Michael Malone taken  
23      on August 22, 2022 is attached hereto as Exhibit 2.

1           10. A true and correct copy of an email (Bates stamped CHOP-0055051 plus  
2 attachment) dated June 1, 2021 from Paul Peterson to Michael Malone and Barbara Malone  
3 regarding the UPS shipment of Michael Malone's lost phone is attached hereto as Exhibit 3.

4           11. A true and correct copy of an email (Bates stamped CHOP-0055045 plus  
5 attachment) dated June 7, 2021 from Paul Peterson to Michael Malone about the theft of Malone's  
6 phone, filing a claim with UPS for the phone, and the attached UPS delivery receipt for the package  
7 (that was stolen upon delivery) is attached hereto as Exhibit 4.

8           12. Mr. Malone was reimbursed by UPS for the theft of his phone. A true and correct  
9 copy of the reimbursement check dated July 15, 2021 is attached hereto as Exhibit 5.

10           13. The City never asked to inspect Mr. Biller's phone despite now moving for  
11 sanctions.

12           14. Plaintiffs have produced over 8,866 Signal messages that Plaintiffs' counsel  
13 collected from a third-party participant who was involved in these neighborhood chats, even  
14 though these chats were almost exclusively personal messages sent on personal devices.

15           15. The City's position with regard to personal messages on Signal is hypocritical,  
16 because such messages were personal messages, but the City refused to even collect any forms of  
17 personal communication for any of its City employees. A true and correct copy of an email from  
18 me to counsel for the City dated September 7, 2022, is attached hereto as Exhibit 6, asking the  
19 City to confirm that it refused to "preserve, collect and produce ESI from its employees" personal  
20 electronic devices. Also attached to Exhibit 6 is a letter dated September 9, 2021, in which I had  
21 asked the City to confirm the same position, which it later did. *See* email dated September 28, 2021  
22 from me to Mr. Cramer and Ms. Caitlin Pratt (former counsel for the City), a true and correct copy  
23 of which is attached as Exhibit 10.

24           16. A true and correct copy of the City's response email dated September 7, 2022, is  
25 attached hereto as Exhibit 7. The email reaffirmed the City's refusal to preserve or collect any ESI

1 from its employees' personal phones: "[w]ith respect to your position that the City needs to collect  
 2 text messages from all of its employees' personal cell phones, **our position remains the same as**  
 3 **it has throughout the case.** The City's collection of text messages from its employees' personal  
 4 devices is both overly burdensome and constrained by *Nissan* and other cases we cited to you in  
 5 September when we last discussed this issue." (emphasis added.)

6 17. The City's Dkt. 108-19, a 34-page printout, is only a small sample of the 8868  
 7 Signal messages produced by Plaintiffs.

8 18. A true and correct copy of an excerpt of Plaintiff's Signal Message Production  
 9 showing a selection of direct messages that were produced by Plaintiffs is attached hereto as  
 10 Exhibit 8.

11 19. In discovery, Plaintiffs received a handful of text messages between Mayor Jenny  
 12 Durkan's personal phone and Mr. Malone in response to subpoena that Plaintiffs issued directly to  
 13 Durkan, consisting mainly of Mr. Malone's requests for meetings to discuss the cleanup of the  
 14 neighborhood and Cal Anderson Park. Former Mayor Durkan marked these messages  
 15 "Confidential."

16 20. Plaintiffs produced 998 other text messages and hundreds of emails to or from Ms.  
 17 Cronauer.

18 21. Plaintiffs produced emails, board minutes and Signal messages from Mr. Biller and  
 19 Onyx HOA.

20 22. Ms. Elle Lochelt was not designated as a custodian for Richmark during discovery.

21 23. True and correct copies of Excerpts of the Deposition of Bill Donner taken on  
 22 November 16, 2021 are attached hereto as Exhibit 9.

1 I declare under the penalty of perjury under the laws of the United States of America and  
2 the State of Washington that the foregoing is true and correct.

3 DATED this 28<sup>th</sup> day of October, 2022 at Vashon Island, Washington.

4  
5 s/ Gabriel Reilly-Bates

6 Gabriel Reilly-Bates  
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27 DECLARATION OF GABRIEL REILLY-BATES  
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